

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROBERT KARPIUK, WILLIAM M. LAWLOR,  
and WILLIAM M. LAWLOR, INC.,

UNPUBLISHED  
August 8, 2006

Plaintiffs/ Counter-Defendants-  
Appellants,

and

SOUTHSIDE FOODS, INC.,

Plaintiff-Appellant,

v

CARLTON MYERS, SWEETNERS PLUS, INC.,  
SYNERGY FOODS, L.L.C., SELECT  
INGREDIENTS, L.L.C., and SELECT FOOD  
PROCESSING CORPORATION,

Defendants-Appellees,

and

RICHARD KRAMER, DONALD KRAMER, and  
HAROLD KRAMER, Co-Personal  
Representatives of the ESTATE OF SIGMUND  
KRAMER, and HARRIDON ENTERPRISES,  
INC.,

Defendants/ Counter-Plaintiffs/  
Third-Party Plaintiffs-Appellees,

v

JOHN DICKERSON and ERICKA MANN,

Third-Party Defendants.

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Before: White, P.J., and Fitzgerald and Talbot, JJ.

WHITE, P.J. (*concurring in part and dissenting in part*).

I concur in the affirmance with respect to Myers and Sweetners Plus, Inc. I dissent from the affirmance of the dismissal of the claims against the Kramer defendants.

The circuit court dismissed these claims on several grounds. The court concluded that the prior breach and failure of consideration rules preclude plaintiff Karpiuk from recovering on the breach of contract claim; that the prior breach and unclean hands doctrines preclude him from recovering on the breach of fiduciary duty claim; and that the wrongful conduct rule bars plaintiff's minority oppression claim.<sup>1</sup>

As the circuit court observed, the wrongful conduct rule cannot be held to bar plaintiff's claims as a matter of law, because there are questions of fact as to causation. Further, the wrongful conduct rule does not apply where the plaintiff can prove a claim without offering evidence of his own illegal conduct. *Poch v Anderson*, 229 Mich App 40, 49; 580 NW2d 456 (1998) ("if a complete cause of action can be shown without the necessity of proving the plaintiff's illegal act, the plaintiff will be permitted to recover notwithstanding that the illegal act may appear incidentally and may be important to the explanation of other facts in the case," quoting 1 Am Jur 2d, Actions, sec 45, p 753). The circuit court recognized this principle but nevertheless concluded that because plaintiff's guilty plea is "an integral part of the nucleus of facts from which his claims arose" the doctrine may be applied. I disagree with this conclusion. This is not a case where plaintiff must rely on his illegal conduct to recover. See *Orzel v Scott Drug Co*, 449 Mich 550; 537 NW2d 208 (1995).

As to the prior breach and unclean hands doctrines, I conclude that the relationship and dealings between the parties was far too complex and multifaceted to permit a determination that these doctrines bar plaintiff's claims as a matter of law. Plaintiff Karpiuk provided a \$150,000 loan<sup>2</sup> and services before his breach. Under these circumstances, I cannot conclude that there was a complete failure of consideration and that Karpiuk forfeited all rights as a matter of law.

/s/ Helene N. White

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<sup>1</sup> The court's written opinion states:

Because the Court has previously ruled, however, that the minority oppression claim is, essentially, part of the breach of contract claim; and because a minority oppression is, in its origins, an equitable claim, the wrongful conduct rule does bar plaintiff's minority oppression claim as well as the breach of contract claim.

However, the court may have misspoken, as it earlier ruled that the wrongful conduct rule did not bar the contract claim, but the prior breach and failure of consideration rules did.

<sup>2</sup> While plaintiff did, indeed, receive a promissory note for this loan, the loan was part of the overall agreement between the parties.